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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/904,182	07/11/2001	Albert C. Lardo	56245	1162

21874 7590 08/06/2003
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[REDACTED] EXAMINER

SHAY, DAVID M

[REDACTED] ART UNIT [REDACTED] PAPER NUMBER

3739

DATE MAILED: 08/06/2003

7

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No. 09/904,182	Applicant(s) Lando et al
Examiner <i>D. Shay</i>	Group Art Unit 3739

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Response

A SHORTENED STATUTORY PERIOD FOR RESPONSE IS SET TO EXPIRE 1 month MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

(ONE)

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a response be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for response specified above is less than thirty (30) days, a response within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for response is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication .
- Failure to respond within the set or extended period for response will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

Responsive to communication(s) filed on April 21, 2003.

This action is FINAL.

Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

Claim(s) 1-12, 14-29, 31-41, 48-50 + 55-60 is/are pending in the application.

Of the above claim(s) _____ is/are withdrawn from consideration.

Claim(s) _____ is/are allowed.

Claim(s) _____ is/are rejected.

Claim(s) _____ is/are objected to.

Claim(s) 1-12, 14-29, 31-41, 48-50 + 55-60 are subject to restriction or election requirement.

Application Papers

See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

The proposed drawing correction, filed on _____ is approved disapproved.

The drawing(s) filed on _____ is/are objected to by the Examiner.

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

All Some* None of the CERTIFIED copies of the priority documents have been received.

received in Application No. (Series Code/Serial Number) _____.

received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____.

Attachment(s)

<input type="checkbox"/> Information Disclosure Statement(s), PTO-1449, Paper No(s). _____	<input type="checkbox"/> Interview Summary, PTO-413
<input type="checkbox"/> Notice of References Cited, PTO-892	<input type="checkbox"/> Notice of Informal Patent Application, PTO-152
<input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review, PTO-948	<input type="checkbox"/> Other _____

Office Action Summary

Art Unit: 3739

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-12, 14-19, 25-29, 55-57 and 60, drawn to a photodynamic therapy device, classified in class 607, subclass 88.
- II. Claims 20-24, 31-41, 49, 50, 58, and 59, drawn to a method of treating the heart, classified in class 128, subclass 898.

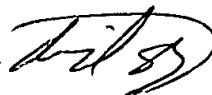
The inventions are distinct, each from the other because:

Inventions II and I are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP§ 806.05(e)). In this case the device could be used to perform brain surgery.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

A telephone call was made to Ms. Lisa S. Hazzard on June 12, 2003 to request an oral election to the above restriction requirement, but did not result in an election being made.



Shay/DI

DAVID M. SHAY
PRIMARY EXAMINER
GROUP 330